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No. 91-1018

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

THE NORTHERN TRUST COMPANY,
Successor Guardian of the Estate
of **SHELBY ANDERSON MORAN**, a Disabled Person,
Petitioner,

v.

THE UPJOHN COMPANY, JOHN J. BARTON, M.D.,
and **ILLINOIS MASONIC MEDICAL CENTER,**
Respondents.

**Petition For Writ Of Certiorari To The Appellate
Court Of Illinois, First Judicial District**

**RESPONDENT ILLINOIS MASONIC MEDICAL
CENTER'S BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

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Respondent Illinois Masonic Medical Center respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Illinois Appellate Court opinion in this case (reported at 213 Ill.App.3d 390, 572 N.E.2d 1030 (1991)).

REASONS WHY PETITION SHOULD BE DENIED

Plaintiff's Petition for Certiorari should be denied. The Petition does not demonstrate the presence of any of the factors traditionally considered important by this Court in determining that further review of a case beyond that already provided by the state court system is desirable.

This matter is a civil tort case (medical malpractice) involving only matters of state law (e.g., strict liability, negligence, weight of the evidence). The case has never presented any question of federal law. It has never presented any constitutional questions. The purported federal questions now presented by Plaintiff were not raised in the courts below. The case below was resolved on the basis of the evidence presented by the parties. Plaintiff's evidence was plainly insufficient to support a verdict and the Illinois Appellate Court so found. After a thorough examination of Plaintiff's Petition for Leave to Appeal and Defendants' Responses, the Illinois Supreme Court denied leave to appeal.

Plaintiff's only assertion of a purported federal question as to this portion of the case (Illinois Masonic Medical Center) is a summary statement that the judgment deprived her of the right to a jury trial. This is plainly untrue because a lengthy trial was held wherein insufficient evidence of liability was presented. Plaintiff alleged that the hospital should be found liable on the basis of the allegedly negligent conduct of Nurse Ping and on the basis of the alleged negligence of Dr. Barton (alleged to be an agent of the hospital). The Appellate Court found that Plaintiff's expert witness Dr. Mathews did not establish

the standard of care as to Nurse Ping and did not establish Nurse Ping's deviation from any standard (Pet. 21-23a). On the other hand, the adherence by Nurse Ping to the standard of care was established by several practicing obstetrician/gynecologists (e.g., Dr. Gianopoulos and Dr. King) (Pet. 23a). The Appellate Court further found that Plaintiff's expert Mathews did not establish the standard of care with respect to Defendant Dr. Barton nor any deviation from the standard (Pet. 20a). The judgment of reversal was in complete accord with the well established principles of review set forth by the Illinois Supreme Court in *Pedrick v. Peoria and Eastern Railroad Company*, 37 Ill.2d 494, 229 N.E.2d 504 (1967). The traditional power of a court to enter judgment at trial or on appeal notwithstanding the verdict of the jury was properly exercised and the judgment does not present any constitutional or federal questions.

All of the other assertions of federal questions involve matters relating only to Defendant Upjohn (manufacturer of drug). The purported federal questions are not genuinely raised by the judgment in this case and do not justify further review of any portion of this case, especially not the portion involving Defendant Illinois Masonic Medical Center (No. 89-2244).

Plaintiff does not contend (and could not reasonably contend) that the judgment of the Court is in conflict with any decision of this Court, or of the U.S. Court of Appeals, or of the Illinois Courts, or any other court. No such claim is made because the judgment is consistent with all existing authority.

The judgment in this cause was correct and just. Plaintiff has not shown any reason why further review of the case by this Court would be warranted.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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